

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

No. CR 10-2573 JB

ESPERANZA VALENZUELA,

Defendant.

MEMORANDUM OPINION AND ORDER

THIS MATTER comes before the Court on the Defendant's Objection to the Pre-Sentence Report, filed September 27, 2010 (Doc. 20) ("Objection"). The Court held a sentencing hearing on September 28, 2010. The primary issue is whether the Court should insert a paragraph, that Defendant Esperanza Valenzuela's counsel has written, into paragraph 22 of the Presentence Investigation Report (disclosed September 23, 2010) ("PSR"), to explain the circumstances of one of her convictions. Plaintiff United States of America and the United States Probation Office do not oppose the insertion. On September 28, 2010, the United States Probation Office presented to the Court an Addendum to the Presentence Report that added Valenzuela's requested language. See Electronic Mail Transmission to the Court from Robert C. Sanchez, Officer Support Specialist (sent September 28, 2010). Consequently, the Court overrules Valenzuela's Objection as moot.

PROCEDURAL BACKGROUND

Valenzuela's counsel received the PSR on September 24, 2010, and reviewed the PSR with Valenzuela on September 27, 2010. Valenzuela has filed an objection to the PSR and requests that a subparagraph be inserted into paragraph 22 of the PSR. According to Valenzuela, she makes this

request by means of an objection because this case potentially warrants a time-served sentence, the sentencing is set for September 28, 2010, and thus there is not time to request this addition informally. Valenzuela requests this addition to paragraph 22:

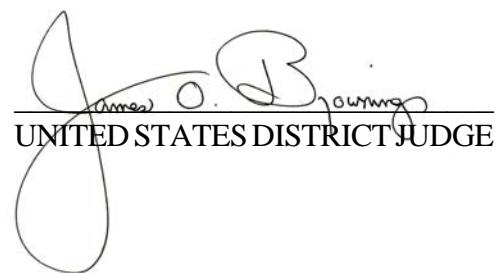
Ms. Valenzuela reports that she had drunk part of one beer prior to the accident. When the car rolled over, she was badly injured -- she had lacerations on her hand and head, and fractured a disc in her neck, and was covered in blood. There was beer in the car which broke open and sloshed on her in the course of the rollover. When the officer was speaking to her, Ms. Valenzuela, due to pain and shock, could see his mouth moving but could not make out any words. She held her hands up, palms toward the officer, and cried "stop! stop!" The officer took her uplifted fingers to be the answer to the question he was asking, which was how many beers she had drunk, and wrote that number in his report. She reports that in fact, in the hospital her blood alcohol content was tested and turned out to be .02, far below the level of intoxication. It was for these reasons that this charge was dismissed.

Objection at 1-2. The USPO has now added a substantially similar paragraph in an addendum to the PRS. At the sentencing hearing, neither the United States nor the USPO objected to the addition of this paragraph, and Valenzuela approved of the language the USPO added to the PSR.

ANALYSIS

The proposed language clarifies the circumstances and resolution of the arrest described in paragraph 22. The proposed language and the substantially similar language that the USPO added to the PSR make clear that this paragraph is Valenzuela's version of events, and that the USPO, the Court, and the United States are not necessarily agreeing with her version. There being no objection to the addition of this paragraph, and the USPO having added the language to the PSR, the Court overrules Valenzuela's Objection as moot.

IT IS ORDERED that the Defendant's Objection to the Pre-Sentence Report is overruled as moot.



UNITED STATES DISTRICT JUDGE

Counsel:

Kenneth J. Gonzales
United States Attorney
Norman Cairns
Assistant United States Attorney
Albuquerque, New Mexico

Attorneys for the Plaintiff

Kari Converse
Assistant Federal Public Defender
Albuquerque, New Mexico

Attorney for the Defendant